

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES OF AMERICA, ) AU:99-CR-00274(1)-LY  
)  
Plaintiff, )  
)  
V. ) AUSTIN, TEXAS  
)  
GARY PAUL KARR, )  
)  
Defendant. ) JANUARY 12, 2021

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TRANSCRIPT OF TELEPHONE CONFERENCE  
BEFORE THE HONORABLE LEE YEAKEL  
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APPEARANCES:

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Proceedings recorded by computerized stenography, transcript  
produced by computer.

10:32:03 1 (In chambers)

10:32:03 2 THE COURT: We're here for a telephone conference in  
10:32:04 3 Cause Number 99-CR-274, *United States v. Gary Paul Karr*.

10:32:09 4 Starting with the government, tell me who is on the  
10:32:14 5 line please.

10:32:14 6 MR. HARDING: Matt Harding for the United States,  
10:32:17 7 Your Honor.

10:32:18 8 MR. GUESS: Dan Guess for the United States,  
10:32:19 9 Your Honor.

10:32:20 10 THE COURT: And who is on the line for the defendant?

10:32:22 11 MR. ALDREDGE: Horatio Aldredge for Mr. Karr.

10:32:28 12 MS. WILLIAMS: And Christie Williams for Mr. Karr.

10:32:31 13 THE COURT: All right. So I've got before me the  
10:32:40 14 government's motion for continuance in this case. Mr. Harding,  
10:32:47 15 Mr. Guess, let me hear from you first.

10:32:50 16 MR. HARDING: Yes, sir. The government's motion for  
10:32:54 17 continuance is based on the desire, and I would argue need, to  
10:33:00 18 provide a PSR in this case, Judge. Although Federal Rule of  
10:33:06 19 Criminal Procedure 32, it says there should be a PSR in a case,  
10:33:11 20 I will say it is discretionary with the judge. You can waive  
10:33:16 21 that if you make certain findings on the record. And, in  
10:33:19 22 particular, your findings would be that the record as it stands  
10:33:22 23 now is sufficiently developed for you to impose a sentence  
10:33:25 24 regardless of a PSR.

10:33:27 25 But I don't think that would be appropriate in this

10:33:29 1 case in light of several factors: One, obviously there's a  
10:33:33 2 great deal of time that has passed between the original PSR and  
10:33:36 3 now. And, of course, the defense wants you to consider some  
10:33:39 4 positive things about Mr. Karr that weren't contained in the  
10:33:42 5 PSR and couldn't have been, and the government will want you to  
10:33:45 6 consider some more negative things, again, that couldn't have  
10:33:49 7 been included in the first PSR because they weren't known at  
10:33:56 8 the time of writing.

10:33:56 9           Moreover, the Rule 32 suggests that another purpose  
10:33:59 10 of the PSR -- a revised PSR would be to calculate the  
10:34:04 11 guidelines. As the Court is probably aware from reviewing the  
10:34:07 12 first PSR, there essentially was no meaningful guideline  
10:34:12 13 calculation with respect to counts two and three because there  
10:34:15 14 didn't have to be one. The range of punishment was life, and  
10:34:18 15 it was going to be a mandatory life sentence. And so the  
10:34:20 16 guideline calculations were essentially irrelevant. Obviously,  
10:34:24 17 that's changed now.

10:34:25 18           And so, in light of the changed circumstances, you  
10:34:28 19 know, not only the possible statutory range of punishment but  
10:34:31 20 also the guideline ranges and the facts that both sides would  
10:34:35 21 like the Court to take note of, it seems beneficial to the  
10:34:40 22 Court and to the party to have a revised PSR, not only because,  
10:34:44 23 as the court knows, if we fail to calculate the guidelines  
10:34:48 24 properly in the first instance, basically, everything that  
10:34:51 25 happens after that is subject to attack on appeal. But even

10:34:55 1 barring that, if Mr. Karr were to waive a PSR and the PSR came  
10:35:03 2 out against him and the sentence came out against him, then  
10:35:06 3 we'd all be back here, potentially, on the 2255 again for  
10:35:10 4 ineffective assistance of counsel.

10:35:12 5 In short, Judge, the government believes that a  
10:35:14 6 modest delay now could save us a lot of time later. And maybe  
10:35:17 7 equally important, once the PSR comes out and the defense or  
10:35:22 8 the government files their specific objections to it, that will  
10:35:26 9 narrow the issues for the sentencing hearing to the point  
10:35:29 10 where, hopefully, we could make it a very efficient hearing in  
10:35:33 11 the future rather than having to go through every possible fact  
10:35:36 12 that would not be contained in the PSR.

10:35:39 13 And so, Judge, for those reasons we think that a time  
10:35:42 14 period of 90 days is appropriate. I picked that time after  
10:35:46 15 consultation with the probation department, because we don't  
10:35:48 16 want them to be put in a position where they're up against the  
10:35:52 17 wall on this. But, obviously, we'll defer to the Court's  
10:35:57 18 judgment.

10:35:58 19 THE COURT: Ms. Williams?

10:35:59 20 MS. WILLIAMS: Well, Your Honor, I understand the  
10:36:05 21 government's position, but I also fear that they provided us a  
10:36:13 22 great deal of discovery. I have reviewed it all. Ninety-seven  
10:36:16 23 percent of it is discovery that was known prior to trial, so it  
10:36:23 24 would have been covered in the first presentence report. So  
10:36:25 25 the amount of updates that the presentence report needs is

10:36:29 1 extremely small, and so I'm confused why the government feels  
10:36:33 2 that 90 days is even appropriate.

10:36:35 3 THE COURT: Well, let me tell you how I feel, because  
10:36:38 4 I'm -- I'll be honest with both of you, I'm a lot more  
10:36:42 5 concerned about me than either one of you. And I'm a little  
10:36:46 6 bit annoyed on the way this has come down.

10:36:48 7 This case was transferred to me on August the 21st.  
10:36:53 8 Up until that time, I had no earthly idea that anything was  
10:37:00 9 going on in it. I was advised shortly after that, and after  
10:37:10 10 I'd reviewed the file and seen that Judge Sparks had indicated  
10:37:19 11 that it should not be set for sentencing before January the  
10:37:22 12 4th, that the parties were trying to work out a recommendation  
10:37:29 13 to the Court and that we didn't need to proceed on anything in  
10:37:36 14 this case while that was going on.

10:37:38 15 I then set the case for sentencing on January  
10:37:42 16 the 20th. You-all kind of erroneously refer to that as  
10:37:47 17 "resetting." I understood Judge Sparks to say it shouldn't be  
10:37:51 18 sentenced before January the 4th, so I consider my setting to  
10:37:54 19 be the first setting.

10:37:56 20 We then are advised fairly recently that your  
10:38:05 21 discussions have broken down, and there will not be a  
10:38:09 22 recommendation forthcoming to the Court.

10:38:12 23 Then I get the government's motion for continuance  
10:38:22 24 which indicates that it will be opposed, but for the rather  
10:38:28 25 vague reason that the defense has not been able to speak with

10:38:34 1 their client about it. But that is now moot because I have  
10:38:37 2 gotten the defense's response which says that this is opposed.

10:38:43 3 I was not the sentencing judge in this case  
10:38:48 4 originally, so it is all new to me. What has occurred since  
10:38:57 5 the sentencing which has led to the need for resentencing has  
10:39:04 6 been a pretty big shift in the entire situation involving the  
10:39:11 7 original sentencing.

10:39:13 8 To try to review the original presentence  
10:39:20 9 investigation report in the context of some minor changes would  
10:39:26 10 do nothing, I think, but confuse me as to what was still  
10:39:32 11 relevant and what was not relevant from the original sentencing  
10:39:36 12 and would certainly confuse any subsequent court who looks at  
10:39:43 13 this.

10:39:43 14 The best way -- and I would have expected both of you  
10:39:46 15 to agree that this is the best way, both sides to agree,  
10:39:50 16 because you're all good lawyers; you've been in front of me  
10:39:55 17 before -- is to work with probation and determine what  
10:39:59 18 probation needed to review in order to prepare a new, complete,  
10:40:07 19 and thorough presentence investigation report based on the  
10:40:11 20 facts as they exist now and new and updated guidelines  
10:40:18 21 calculations.

10:40:18 22 The probation department advises me that the  
10:40:24 23 department met with case agents at the end of December and was  
10:40:27 24 given thousands of pages of reports which probation is  
10:40:32 25 currently reviewing, and then on January the 4th, a week ago,

10:40:38 1 the defense sent the Bureau of Prisons records to the probation  
10:40:43 2 department.

10:40:51 3 It would be just, I think, sheer folly to try to  
10:40:54 4 proceed in this case based on that alone. But now today, filed  
10:41:05 5 yesterday, I have reviewed a sentencing memorandum from the  
10:41:08 6 defense that I definitely want a response to by the government  
10:41:15 7 or a parallel sentencing memorandum by the government.

10:41:20 8 I also, based on the way cases of some complexity  
10:41:27 9 have gone in my court over the past years, would anticipate  
10:41:30 10 that once the probation department prepares a new sentencing  
10:41:35 11 memorandum -- I mean, a new presentence investigation report,  
10:41:39 12 I'm going to get new sentencing memorandums from each side to  
10:41:47 13 bring out additional things to this court. And I also pretty  
10:41:53 14 much feel that if we get a new presentence investigation  
10:41:58 15 report, one or both sides may or may not have objections to  
10:42:03 16 that presentence investigation report that I will need to  
10:42:07 17 review. I think that will also be true if I were to say I  
10:42:15 18 would accept an abbreviated reported or a supplemental report  
10:42:21 19 from the probation department.

10:42:25 20 Also out there is -- I have not heard, and so I'm  
10:42:30 21 going to take this up now and I want the government to address  
10:42:33 22 it first -- whether each side intends to present evidence at  
10:42:42 23 the resentencing and how long you think a resentencing hearing  
10:42:48 24 is likely to take.

10:42:51 25 So, Mr. Harding, Mr. Guess I'll start with the

10:42:54 1 government. What's your feeling on the logistics? What's the  
10:42:59 2 government intend to do with regard to witnesses at any  
10:43:04 3 sentencing hearing the Court sets?

10:43:06 4 MR. HARDING: Judge, assuming a new presentence  
10:43:10 5 report comes out and we have, sort of, discrete objections to  
10:43:14 6 the facts -- I spoke to Mr. Aldredge about this -- and I think  
10:43:20 7 probably there will be, if a new report comes out, a fairly  
10:43:26 8 limited set of facts that will actually be in dispute. And so  
10:43:29 9 I would anticipate under those circumstances, we would call a  
10:43:34 10 witness because, for better or worse, we would like to give the  
10:43:39 11 Court sort of an overview of the case to give some context  
10:43:42 12 beyond just the words on the page. But we don't want to  
10:43:44 13 belabor anything here and repeat what's in the report to any  
10:43:48 14 great extent.

10:43:49 15 But I would anticipate that if we have a new report  
10:43:51 16 and what I anticipate to be limited objections to it, that our  
10:43:56 17 presentation would be maybe an hour long. Maybe a bit more,  
10:44:00 18 maybe a bit less, but not an all-day affair, recapping the  
10:44:07 19 entire case.

10:44:07 20 If there is no new presentence investigation report,  
10:44:10 21 then I think it becomes substantially longer because there's a  
10:44:13 22 lot of facts that need to be established that will not have  
10:44:17 23 been recorded anywhere because it couldn't have been.

10:44:21 24 THE COURT: All right. Ms. Williams? Mr. Aldredge?

10:44:28 25 MR. ALDREDGE: Well, Your Honor, the good thing about



10:44:30 1 the record in this case is that we have a jury verdict. And  
10:44:34 2 what I anticipate is the only -- the only thing that I  
10:44:38 3 anticipate would belabor anything at the hearing on this matter  
10:44:43 4 is that the government is going to try to get the Court to look  
10:44:47 5 beyond the jury verdict.

10:44:48 6 And, as Ms. Williams said, there is -- and as  
10:44:52 7 Mr. Harding just said, as a matter of fact, there is very  
10:44:55 8 little new evidence. I would describe it as maybe six to ten  
10:45:03 9 reports, but largely covering the same topics, though. I'm  
10:45:08 10 totally mystified about why it is that we would need so much  
10:45:11 11 time to -- to generate an updated presentence report.

10:45:16 12 I mean, I have also reviewed the thousands of pages,  
10:45:19 13 as Ms. Williams has, that apparently probation has been given.  
10:45:23 14 It would be a total waste of time and totally duplicative for  
10:45:28 15 probation to have to review this. There is nothing new apart  
10:45:31 16 from six to ten reports.

10:45:32 17 And so what I had encouraged Mr. Harding to do and  
10:45:36 18 suggested when we spoke earlier this or last week, is that,  
10:45:40 19 essentially, the government can submit a filing with any  
10:45:44 20 updated information, because that would be the most efficient  
10:45:47 21 and practical way to go about this.

10:45:49 22 And we have already -- obviously, our client's  
10:45:52 23 situation is pretty discreet over the last 22 years, and we  
10:45:57 24 have provided, you know, not very voluminous records from the  
10:46:02 25 Bureau of Prisons. That is the only update that we need from

10:46:06 1 our side.

10:46:08 2 And to answer your question about a presentation and  
10:46:12 3 a hearing, I don't expect that we'll call any witnesses. But I  
10:46:18 4 am just mystified about why the need for so much additional  
10:46:23 5 time. It just doesn't make sense to me.

10:46:25 6 THE COURT: Well, what do you think would be a  
10:46:27 7 reasonable amount of time?

10:46:29 8 MR. ALDREDGE: No more than 30 days.

10:46:34 9 THE COURT: And since I've got you -- Mr. Aldredge,  
10:46:39 10 I'll start with you, and then I'll go to the government on  
10:46:41 11 this. Do you anticipate this to be an in-person sentencing  
10:46:45 12 hearing or a video sentencing hearing?

10:46:47 13 MR. ALDREDGE: Well, Your Honor, I guess it would be,  
10:46:52 14 you know, for Mr. Karr to have come all the way, I would  
10:46:57 15 anticipate that it's an in-person hearing. But, you know --

10:47:01 16 THE COURT: Well, don't tell me what you anticipate.  
10:47:04 17 Tell me whether or not it will be -- I mean, it's up to the  
10:47:12 18 defendant, because to do it any other way than in person, he  
10:47:17 19 will have to waive his right to be present in person.  
10:47:22 20 Certainly that's something you should have taken up with him by  
10:47:25 21 now.

10:47:26 22 MR. ALDREDGE: It will be in-person.

10:47:27 23 THE COURT: All right. You know, we're still in the  
10:47:30 24 middle of the plague, with Travis County cases and things  
10:47:36 25 continuing to rise almost unabated, and we're trying to limit

10:47:42 1 courthouse and personal contact to as few people in here as we  
10:47:48 2 can. Do you not see that as a problem for January the 20th?

10:48:01 3 MR. ALDREDGE: Yes, I do. It's been a problem all  
10:48:04 4 through the pandemic. But, on occasion, we've made exception,  
10:48:07 5 and I think everybody involved in the courthouse has been --  
10:48:12 6 you know, been able to handle it, you know, to minimize risk.

10:48:20 7 THE COURT: Well, I know, but that's a moving target  
10:48:23 8 as the cases continue to go up. We have made adjustments in  
10:48:30 9 the past but not with this. Also, I am advised that the  
10:48:38 10 United States Marshal Service is on high alert because January  
10:48:43 11 the 20th is inauguration day. And they're requesting, not  
10:48:51 12 knowing what demonstrations may be in state capitols around the  
10:48:57 13 country that day, much less this United States Capitol, that we  
10:49:03 14 limit what we're doing as much as we can between now and  
10:49:12 15 through the 20th.

10:49:13 16 All that's a long way of saying that the 20th is  
10:49:17 17 going to be off. We're not going to do this on the 20th, not  
10:49:22 18 only because I grant the government's motion for continuance in  
10:49:25 19 part, but because I don't find it to be realistic to have an  
10:49:33 20 in-person sentencing or anything in person in the courtroom for  
10:49:40 21 a while, until we see what these cases or the rate of infection  
10:49:45 22 is going to do, and also of security concerns because we don't  
10:49:52 23 know whether anything that were to occur at the capitol here,  
10:49:58 24 if anything, would spill over to federal buildings.

10:50:04 25 I do think that 90 days is not realistic or is longer

10:50:11 1 than is necessary. I think the probation department can  
10:50:16 2 prepare a new presentence report in fewer than 90 days, and I  
10:50:21 3 would expect both sides to give the probation department all  
10:50:28 4 the help they can.

10:50:30 5           Also, if we postpone this, we're likely to know a lot  
10:50:37 6 more of the effect of the coronavirus. Perhaps the  
10:50:52 7 immunizations that are being handled less than efficiently in  
10:50:56 8 my opinion will have given us some data by then. But on the  
10:51:02 9 whole, I don't think we need to bump this down the road 90  
10:51:09 10 days. I think 30 days, on the other hand, is probably a little  
10:51:17 11 tight.

10:51:20 12           I'm going to grant the motion for continuance, as I  
10:51:28 13 said, in part, and I want to reschedule this sentencing for  
10:51:31 14 about 60 days from now -- in other words, in March. We'll also  
10:51:40 15 have a whole lot better feel on what we're doing in the  
10:51:44 16 courthouse by March.

10:51:48 17           So I'm going to, based on your assurances you think  
10:51:53 18 we can get this done in a day or less, I'm going to reset this  
10:52:00 19 sentencing for nine o'clock on Friday, March the 12th.

10:52:12 20           Now, I want each side to discuss with the probation  
10:52:21 21 department what the probation department needs in order to get  
10:52:27 22 a presentence report prepared as far in advance of March  
10:52:33 23 the 12th as the probation department can do this.

10:52:36 24           I will tell this to the government and to the  
10:52:39 25 defense, that if I get last-minute filings in this case just

10:52:44 1 before the 12th, then I'm going to reset it again, because I'm  
10:52:49 2 not going to be dealing with things in a case of a resentencing  
10:52:55 3 like this with two positions that are taken in it when I don't  
10:53:02 4 have adequate time to review everything.

10:53:05 5           The one sentencing memorandum I have right now from  
10:53:08 6 the defense indicates effectively that the defense is going to  
10:53:15 7 argue for a time served sentence. I want everything I need to  
10:53:22 8 consider in that regard at least a week before March the 12th.  
10:53:30 9 In other words, anything you want me to consider at this  
10:53:34 10 sentencing, whether it's objections to the presentence  
10:53:37 11 investigation report, amended memoranda, or what have you, I'm  
10:53:43 12 not going to consider anything that gets filed after March the  
10:53:47 13 5th if we're going to sentence this case on March the 12th.

10:53:51 14           What that means for each of you is: Don't wait until  
10:53:55 15 March the 5th to file an amended presentencing memorandum,  
10:54:04 16 because then your opponent does not have time to respond to it,  
10:54:11 17 because I'm not going to consider anything that's filed after  
10:54:14 18 March the 5th.

10:54:15 19           So you-all might need to sit down with one another  
10:54:18 20 and with the probation department and see when there is going  
10:54:22 21 to be a presentence investigation report produced, set your own  
10:54:28 22 deadlines, and work to where I have everything that I'm going  
10:54:31 23 to consider by March the fifth. I will probably want to have a  
10:54:37 24 conference call with you-all sometime after the 5th and before  
10:54:44 25 the 8th once I've seen what gets filed.

10:54:47 1 I do want a completely new presentence investigation  
10:54:51 2 report. I do not want a presentence investigation report that  
10:54:56 3 has references to the old one. We need a clean record here to  
10:55:01 4 go forward with.

10:55:03 5 And just so you don't hear it on the street and have  
10:55:08 6 consternation caused, 35 or 40 years ago, I represented one of  
10:55:15 7 the victims in this case, Madalyn Murray O'Hair. A long time  
10:55:22 8 ago. I think it was in the early '80s, but I can't remember  
10:55:26 9 because it was forever ago. So there you go.

10:55:30 10 So, is there anything else we need to take up in this  
10:55:37 11 matter at this time?

10:55:41 12 MR. HARDING: Nothing from the government, Judge.  
10:55:42 13 Thank you.

10:55:45 14 MR. ALDREDGE: No, Your Honor.

10:55:47 15 THE COURT: All right. One last thing. Mr. Guess,  
10:55:50 16 would you give me a call this morning when you get a chance. I  
10:55:55 17 need to speak to you about another matter.

10:55:59 18 MR. GUESS: Yes, sir. I'll call as soon as we're  
10:56:01 19 done with this one.

10:56:02 20 THE COURT: All right. Well, thank you-all.  
10:56:03 21 Everybody stay safe. Have a good day.

10:56:06 22 (End of transcript)

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1 **UNITED STATES DISTRICT COURT        )**

2 **WESTERN DISTRICT OF TEXAS            )**

3       I, Arlinda Rodriguez, Official Court Reporter, United  
4 States District Court, Western District of Texas, do certify  
5 that the foregoing is a correct transcript from the record of  
6 proceedings in the above-entitled matter.

7       I certify that the transcript fees and format comply with  
8 those prescribed by the Court and Judicial Conference of the  
9 United States.

10       WITNESS MY OFFICIAL HAND this the 31st day of March 2021.

11

12                               /S/ Arlinda Rodriguez  
13                               Arlinda Rodriguez, Texas CSR 7753  
14                               Expiration Date: 10/31/2021  
15                               Official Court Reporter  
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U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (AUSTIN)